

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

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| DON RAY WHITE | § | |
| VS. | § | CIVIL ACTION NO. 9:17cv207 |
| MARK DUFF, ET AL. | § | |

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Don Ray White, an inmate at the Polunsky Unit, proceeding *pro se*, brought the above-styled lawsuit against Mark Duff and Todd Harris.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the defendants' motion to dismiss should be granted and this action be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff does not contest the fact that he has had at least six prior actions or appeals dismissed as frivolous. Additionally, as set forth in the Report, plaintiff has failed to demonstrate he was in imminent danger of serious physical injury at the time he filed his complaint. Accordingly, plaintiff

is not allowed to proceed *in forma pauperis* basis. Accordingly, the defendants' motion to dismiss is proper and the complaint should be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

O R D E R

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So **ORDERED** and **SIGNED March 20, 2019**.

A handwritten signature in black ink, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, Senior District Judge